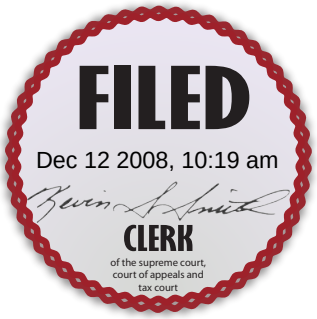

ATTORNEY FOR APPELLANT:

ELIZABETH A. HARDTKE
St. Joseph County Public Defender Agency
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MARJORIE LAWYER-SMITH
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

R.A.V.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0803-JV-107
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH PROBATE COURT
The Honorable Peter J. Nemeth, Judge
The Honorable Barbara Johnston, Magistrate
Cause No. 71J01-0707-JD-575

December 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following a fact-finding hearing, R.A.V. appeals his adjudication of delinquency for having committed harassment, a Class B misdemeanor if committed by an adult. R.A.V. raises the sole issue of whether there was sufficient evidence to support his adjudication. Concluding that sufficient evidence supports R.A.V.'s adjudication, we affirm.

Facts and Procedural History

Sixteen year-old R.A.V. and thirteen year-old N.S. dated for a few months prior to January 2007. Near the end of January, N.S. ended their relationship, stating that they should just be friends. N.S. ended her relationship with R.A.V. at her parent's request. N.S.'s parents thought R.A.V. was too controlling of N.S. and were uncomfortable with the three-year age discrepancy.

Over the next few months, R.A.V. called N.S. on both her cell phone and home phone and the two occasionally spoke. N.S.'s parents became concerned about the number of calls N.S. was receiving from R.A.V. and sought police assistance. On April 4, 2007, Detective Tara Tucker met with R.A.V. and his mother and told him not to contact N.S. anymore. Despite Detective Tucker's warnings, R.A.V. continued to call N.S.

In early May, N.S. called R.A.V. and asked him to meet her at a park, where N.S. told R.A.V. that she did not want to have further contact with him. N.S.'s mother learned about this meeting from a friend who witnessed the two in the park. As a result, N.S.'s mother punished N.S. by taking away her cell phone and forbid her from seeing or having

any communication with R.A.V. N.S.'s parents also told R.A.V. that they did not want him contacting N.S.[1]

After the meeting in the park, R.A.V. called N.S. on her cell phone and home phone over twenty times between May 9 and May 26 and left eighteen messages on N.S.'s voicemail. R.A.V.'s messages were friendly in the beginning, mostly stating that he missed N.S. and wanted her to call him back, but they became progressively "harsher" and made N.S. uncomfortable. Transcript at 16. The messages also targeted N.S.'s parents, telling N.S. that "her parents need to stay out of their lives and that they need to get over it." Brief of Appellee at 5.[2] Although N.S. acknowledged that R.A.V. never threatened her, she did testify that she heard R.A.V. threaten her parents.

On July 24, 2007, a one count delinquency petition was filed alleging that between May 9 and May 26, 2007, R.A.V. had committed what would be harassment if committed by an adult. On December 18, 2007, the juvenile court conducted a fact-finding hearing. N.S. testified that the number and substance of the messages left by R.A.V. made her feel uncomfortable. N.S.'s parents testified that they wanted N.S. to break all communication with R.A.V. and that they told R.A.V. they did not want him contacting their daughter. In addition, the State introduced a recording, made by N.S.'s parents, of the voicemails left by R.A.V. between May 9 and May 26. The State also called Detective Tucker, who testified that on April 4, 2007, she told R.A.V. not to call N.S. anymore.

[1] R.A.V. admits to having overheard a conversation between his friend Tyler and N.S.'s father in which N.S.'s father said "if you know [R.A.V.], tell him not to call." Transcript at 90.

[2] The State cites to State's Exhibit A, a CD of the voicemails, as the source of this statement. Although the CD was part of the record transmitted to this court, we were unable to listen to it because it was broken.

R.A.V. testified that N.S. was actively returning his messages between May 9 and May 26. R.A.V. also testified that it was not until after the calls were made between May 9 and May 26 that Detective Tucker told him to stop calling N.S., at which time he ceased all contact. R.A.V. testified that he did not intend to harass or annoy N.S. by leaving her the messages, but was merely wondering what she was doing. On January 9, 2008, the juvenile court adjudicated R.A.V. a delinquent and this appeal ensued.

Discussion and Decision

I. Standard of Review

"In juvenile delinquency adjudication proceedings, the State must prove every element of the offense beyond a reasonable doubt." A.B. v. State, 885 N.E.2d 1223, 1226 (Ind. 2008). On appeal, we will neither reweigh the evidence nor determine the credibility of the witnesses. Id. "Reviewing solely the evidence and the reasonable inferences from that evidence that support the fact finder's conclusion, we decide whether there is substantial evidence of probative value from which a reasonable fact finder could find beyond a reasonable doubt that the defendant committed the crime." Id. (quoting Al-Saud v. State, 658 N.E.2d 907, 909 (Ind. 1995)).

II. Evidence of Harassment

In order to convict R.A.V. of harassment, the State must prove beyond a reasonable doubt that R.A.V. placed a telephone call, regardless of whether a conversation ensued, with the intent to harass, annoy, or alarm N.S. but with no intent of legitimate conversation. Ind. Code § 35-45-2-2(a).

> Intent is a mental state, and absent an admission, the [factfinder] must resort to the reasonable inferences based upon an examination of the

> surrounding circumstances to determine whether, from the person's conduct and the natural consequences that might be expected from that conduct, there exists a showing or inference of the required criminal intent.

Bennett v. State, 871 N.E.2d 316, 322 (Ind. Ct. App. 2007) (quoting Germaine v. State, 718 N.E.2d 1125, 1132 (Ind. Ct. App. 1999), trans. denied), adopted by 878 N.E.2d 836 (Ind. 2008). Because there was no admission by R.A.V that he intended to harass N.S., the juvenile court had to rely on the surrounding circumstances to determine whether R.A.V.'s multiple calls and messages demonstrated an intent to harass or annoy N.S.

R.A.V. contends that evidence presented at trial was insufficient to prove that he acted with the intent to harass, annoy, or alarm without intent of legitimate communication when he called N.S. R.A.V. argues that he contacted N.S. at her request in an attempt to engage her in legitimate conversation.

R.A.V. relies upon Leuteritz v. State, 534 N.E.2d 265 (Ind. Ct. App. 1989), in support of his argument. In Leuteritz, the defendant telephoned Debbie and Charles Orr's residence and, reaching Debbie, asked to speak to "Diaper Rash Face Charlie." Id. at 266. The defendant called because he thought that Charles owed him $40. Debbie told Leuteritz to stop calling and hung up. The trial court found Leuteritz guilty of harassment. We reversed, holding that intent could not be inferred from Debbie's subjective perception and that the State failed to prove that Leuteritz had no intent of legitimate conversation because Leuteritz communicated his desire to speak to Charles, as it would be nothing more than speculation to assume that if Debbie had given the phone to her husband, no legitimate conversation would have ensued. Id. at 266-67.

R.A.V.'s reliance on Leuteritz is misplaced. Unlike Leuteritz, where the defendant called regarding a $40 debt, which established at least the possibility of legitimate conversation, R.A.V. did not have any clear intent for legitimate conversation. R.A.V. knew that N.S. did not want to speak to him anymore after their meeting in the park, and he also knew that he was not supposed to call her as instructed by both Officer Tucker and N.S.'s parents. Furthermore, unlike Leuteritz, where the defendant called once and complied when he was told not to call again, R.A.V. repeatedly called day after day even though he received no response from N.S.[3] Evidence that R.A.V. did not receive any response after his first couple of calls and persisted in calling and leaving harsher messages on N.S.'s phone supports an inference that R.A.V. intended to harass or annoy N.S. and had no intent of legitimate conversation. Finally, the increasing harshness of the calls and the threatening remarks directed toward N.S.'s parents further support an inference that R.A.V. intended to harass or annoy N.S.

It is undisputed that R.A.V. placed numerous telephone calls to N.S. between May 9 and May 26, 2007. Evidence of the number of calls and messages R.A.V. left for N.S.; that none of these calls or messages were returned; the increasing harshness of the messages; the threats made to N.S.'s parents; and that R.A.V. was told by N.S., her parents, and the authorities not to contact N.S., supports a reasonable inference that

[3] R.A.V. testified that N.S. was returning his calls between May 9 and May 26. N.S. testified that she "could have" called R.A.V.'s phone on May 9, but she did not remember. Tr. at 33. The discrepancy was a credibility determination for the juvenile court. See A.B., 885 N.E.2d at 1226 (appellate courts do not judge the credibility of the witnesses).

R.A.V. intended to harass or annoy N.S. and had no intent for legitimate conversation.[4] Therefore, there was substantial evidence of probative value that R.A.V. harassed N.S.

Conclusion

We hold there is sufficient evidence to sustain R.A.V.'s adjudication of delinquency for committing an act that would be harassment if committed by an adult.

Affirmed.

NAJAM, J., and MAY, J., concur.

[4] R.A.V. also relies on United States v. Darsey, 342 F.Supp. 311 (E.D. Pa. 1972), which interprets 47 U.S.C. § 223(1)(D), prohibiting "repeated telephone calls, during which conversation ensues, solely to harass any person at the called number." The court in Darsey was concerned that a broad application of the statute would implicate "grave constitutional problems related to free speech." Id. at 312. We acknowledged those concerns in Leuteritz, but have distinguished Darsey when substantial evidence demonstrates that the defendant intended to harass or annoy the complainant. See Burton v. State, 665 N.E.2d 924, 926 (Ind. Ct. App. 1996) (holding that the number and nature of calls the defendant made to his former girlfriend and the fact he violated a protective order in making the calls established intent to harass or annoy). Here, R.A.V. ignored repeated warnings from N.S., her parents, and the police in making numerous phone calls and leaving harsh and threatening messages, constituting sufficient evidence of intent to harass or annoy such that application of the harassment statute in this case does not implicate free speech concerns.